UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/447,023	11/22/1999	MARTIN F. BERRY	00414-046001	3274

7590 04/29/2002

JOHN J GAGEL
FISH & RICHARDSON PC
225 FRANKLIN STREET
BOSTON, MA 021102804

EXAMINER
PRATT, HELEN F

ART UNIT	PAPER NUMBER
1761	19

DATE MAILED: 04/29/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

TC - 19

Office Action Summary	Application No. 09/447,023	Applicant(s) BERRY ET AL.	
	Examiner Helen F. Pratt	Art Unit 1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on _____ .

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *70, 85-109* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *70 and 85-109* is/are rejected.

7)☒ Claim(s) *89-110* is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

DETAILED ACTION

Information Disclosure Statement

The information disclosure statement filed 3-8-02 fails to comply with 37 CFR 1.98(a)(3) because it does not include a concise explanation of the relevance, as it is presently understood by the individual designated in 37 CFR 1.56(c) most knowledgeable about the content of the information, of each patent listed that is not in the English language. No pages have been listed as to relevant material.

The disclosure is objected to because of the following informalities: the continuing data that has blanks in it should be filled in.

Appropriate correction is required.

Claim Objections

The numbering of claims is not in accordance with 37 CFR 1.126 which requires the original numbering of the claims to be preserved throughout the prosecution. When claims are canceled, the remaining claims must not be renumbered. When new claims are presented, they must be numbered consecutively beginning with the number next following the highest numbered claims previously presented (whether entered or not).

Misnumbered claims 89-110 have been renumbered as 85-100.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 70, 85-106, 107-109 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chiriboga et al. (Journal of Food Science, p. 464-467).

The claims are rejected for the reasons of record cited in the last office action. Claims107-109 further require that the blended juice has a color determined by the juice component. Ciriboga et al. disclose a cranberry juice cocktail that contains an anthocyanin content within the claimed range, which has 5% light juice. Certainly, this juice component helps determine the color of the cranberry juice. The Table 1 does disclose adding a crude cranberry pigment to the mixture to raise the anthocyanin content, however, the claims do not exclude this limitation. Therefore, it would have been obvious to make a juice with the claimed anthocyanin content.

Claims 108 and 109 require less amounts of an anthocyanin content. However, it is seen that it would have been within the skill of the ordinary worker to use particular amounts of anthocyanin containing juice depending on the required color. Therefore, it would have been obvious to use juices with particular amount of anthocyanin to produce a particular color.

ARGUMENTS

Applicant's arguments filed 3-4-02 have been fully considered but they are not persuasive. Applicants argue that the reference to Chiriboga et al. does not disclose a blended juice with a particular anthocyanin content. However, Applicants' claims are composition claims and the composition need only be considered. Chiriboga et al.

disclose batches of cranberry juice cocktail which have various amounts of anthocyanin content. This is listed under the heading "initial" anthocyanin content. A crude pigment can be added to the mixture to increase the color. The claims do not exclude adding a crude pigment, which brings the anthocyanin content up to 10.5 in the 2nd sample. Applicants say themselves that the objectives of the Chiriboga et al. reference is to mix juice from low color grade with high color grade berry juice and to further make up for the color deficiency by adding anthocyanin pigment. Applicants say that this had been discussed in their specification, pages 1-12 and that the objectives of Chiriboga et al. and the claims are different, in that they want to only produce a juice that has a particular anthocyanin content. Various anthocyanin contents are disclosed in the references Table 1 in various amounts. The last sample show that 60% of the juice could contain 6.4 mg/100 ml anthocyanin. Using even one tenth of that amount of juice would produce an anthocyanin content within the claimed amount. Nothing inventive is seen in saying that one is using only the light color berry juice to produce a particular color. Light juice is disclosed as known as disclosed by Chiriboga.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication should be directed to Helen F. Pratt at telephone number 703-308-1978.

Hp 4-27-09

HELEN PRATT
PRIMARY EXAMINER